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Petition not granted

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 640

FLORENCE J. BAILEY, as Administratrix of Bernard E. Bailey,

Petitioner,

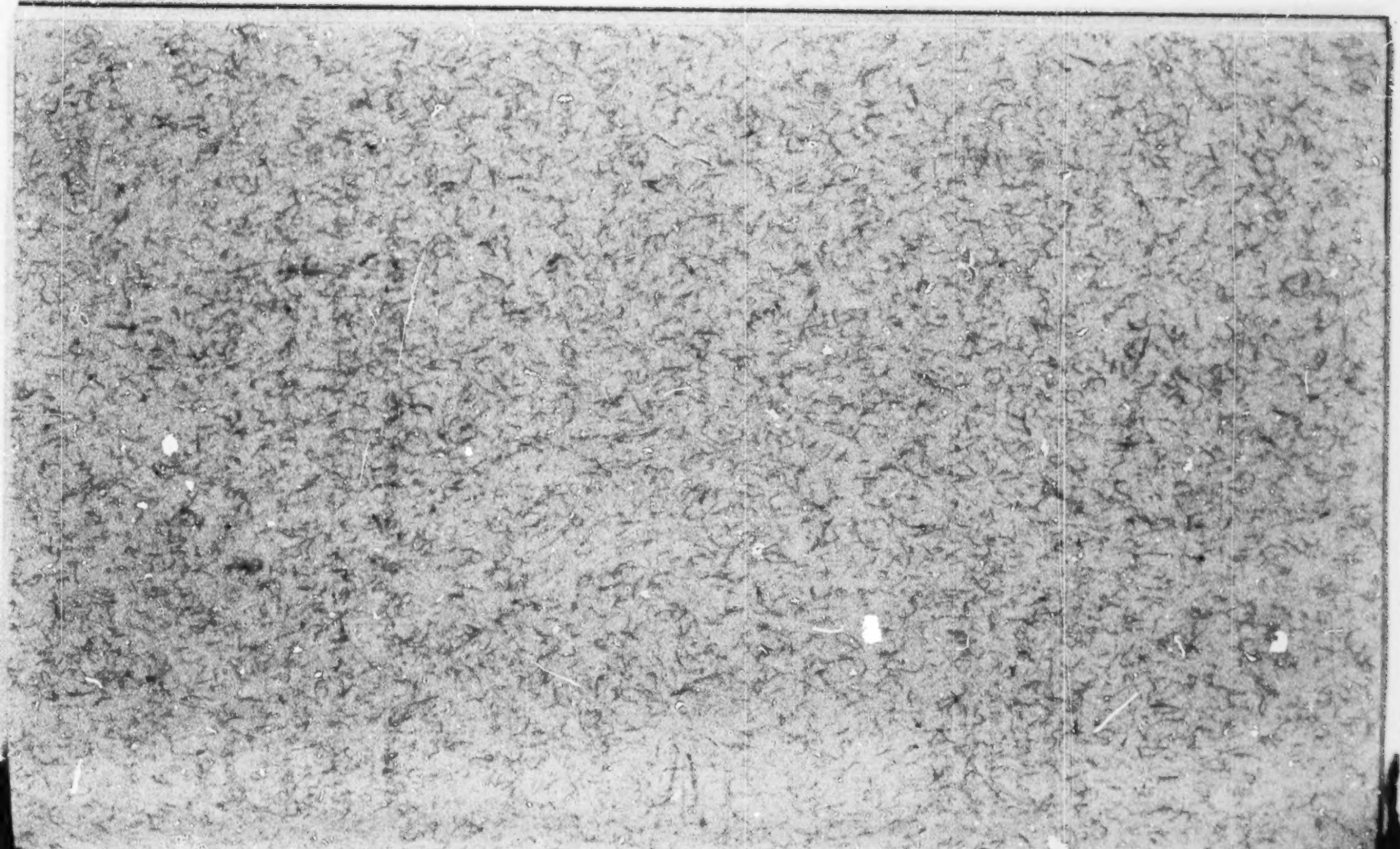
vs.

CENTRAL VERMONT RAILWAY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT.

PETITIONER'S BRIEF.

Joseph A. McNamara,
Robert W. Larrow,
T. Tracy Lawson,
Counsel for Petitioner.



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PETITIONER'S BRIEF.

Official Report of Opinions Below.

No opinion was rendered in the Washington County Court of the State of Vermont. The opinions rendered in the Supreme Court of Vermont have not yet been officially reported. They are printed in connection herewith.

Grounds of Jurisdiction.

The question presented by this case is a substantial one. It is, briefly, the right of petitioner to recover of respondent

under the Federal Employers' Liability Act (U. S. C. A., Tit. 45, 51-59), under the evidence in the case viewed in the light most favorable to her. The interpretation of that Act is necessarily involved, and the right was denied by the Supreme Court of Vermont as a matter of law. The question is what constitutes actionable negligence under the Act, and the majority opinion below is not in accord with the applicable decisions of this Court.

The question of the applicability of the Federal Employers' Liability Act and of liability thereunder was raised in the trial court by petitioner's complaint, where the Act was specifically pleaded. The decision of the Supreme Court was based entirely upon interpretation of the Act (R. 4-5, fol. 5-6). That Court held the Act applicable and purported to determine petitioner's rights thereunder, denying that she had a cause of action under the terms thereof.

Petitioner's complaint in the trial court specifically pleased the Federal Employe[illegible]s' Liability Act.

> "1. In an action of tort, for that, at all times hereinmentioned, defendant was and now is a public service corporation organized and existing under the laws of this state and was and is a common carrier by railroad engaged in interstate commerce, and that plaintiff's intestate at all times hereinafter mentioned was employed by defendant in such interstate commerce; that such employment was within the terms of an Act of Congress, entitled, 'An Act Relating to the Liability of Common Carriers by Railroad to Their Employees in Certain Cases,' commonly known as the Federal Employers Liability Act."

The opinion of the Supreme Court of Vermont specifically held:

> "We are here dealing with a Federal statute which supersedes all state laws covering the same field.

Mondou v. New York, N. H. & H. R. Co., 223 U. S. 1, 56 L. Ed. 327, 32 S. Ct. 169, 38 L. R. A. (N. S.) 44; *Robey v. Boston & Maine Railorad*, 91 Vt. 386, 389, 390. In proceedings under the Act the rights and obligations of the parties depend upon it and applicable principles of the common law as interpreted and applied in the Federal Courts. *Chesapeake & O. R. Co. v. Kuhn*, 284 U. S. 44, 76 L. Ed. 157; *Robey v. Boston and Maine Railroad, supra.*" (R. 4, fol. 5)

Section 237 of the Judicial Code, as amended (U. S. C. A., Tit. 28, Sec. 344), provides in its pertinent portion:

"(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had * * * where any title, right, privilege, or immunity is especially set up or claimed by either party under * * * any statute of * * * the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied * * *."

The jurisdiction of this Court to review the judgment below is supported by the following cases:

Seaboard Air Line Ry. v. *Renn*, 241 U. S. 290, 60 L. Ed. 1006, 36 S. Ct. 567;

Chicago, R. I. & P. Ry. Co. v. *Devine*, 239 U. S. 52, 60 L. Ed. 140, 36 S. Ct. 27;

Lilly v. *Grand Trunk W. R. Co.*, No. 124, Oct. Term, 1942, 87 L. Ed. 323;

Schlemmer v. *Buffalo R. and P. R. Co.*, 205 U. S. 1, 51 L. Ed. 681, 27 S. Ct. 407;

Union Pacific R. Co. v. *Hadley*, 246 U. S. 330, 62 L. Ed. 751, 38 S. Ct. 318.

Statement of the Case.

This was an action at law brought by petitioner against respondent in the Washington County Court of the State of Vermont, under the Federal Employers' Liability Act. Verdict and judgment were rendered for petitioner, and respondent appealed. The Supreme Court of Vermont, in a 3-2 decision, held that respondent's motion for a directed verdict should have been granted, reversed the trial court, and rendered judgment for the respondent. This Court granted certiorari.

Viewed in the light favorable to petitioner, the evidence in the trial court showed the following facts:

Petitioner's intestate had been employed as a section hand by respondent railway for five years prior to the accident in question. (T. 61) On May 14, 1940, while so employed, he suffered a fatal injury. (T. 11, 13, 24) On that day, with one member of his own section crew, and ten members of other crews (T. 12, 13, 33) he went on a work train to a point on the railway in Williston, Vt. (T. 11, 12, 28) During the day the crew unloaded track material (T. 12) to be used on the road bed (T. 46) This work completed around 4 o'clock, (T. 13, 55) instructions were given to unload a cinder car, which was pulled out onto an overpass, or bridge. (T. 13)

The floor of this bridge was about 18 feet above the ground. (T. 14) The only available footing at the side of the car was about 12 inches wide, 8 or 9 inches of which was a raised stringer. (T. 28, 29) A hopper car is opened at the side by one man turning a nut on the end of a shaft, while another disengages a dog holding the nut. The release of the dog enables the weight of the material in the car to open it, spinning the nut at the end of the shaft. (T. 35, 74, 80, 138)

Intestate was unfamiliar with the method of opening a hopper car. (T. 22, 33, 58, 64, 69, 74, 76) He had been present on a few occasions when it was done, but usually on top of the car. (T. 67, 74) He had never been instructed in the use of any wrench for this purpose. (T. 47, 48, 66, 77) If the operator does not immediately let go of the frog wrench in this operation, it will yank him or snap him down. (T. 37, 74, 80, 138)

The wrench used, a frog wrench with a three foot handle, (T. 18, 34) is ordinarily used to tighten nuts on rails. (T. 66, 67) Intestate, who alone with one other of the crew had no shovel, (T. 56, 96) took the wrench from another member of the crew and proceeded onto the bridge to open the hopper car (T. 96) As he put the wrench on the nut, a section foreman told him, "Be careful the wrench does not catch you." (T. 35) As soon as he said this, intestate pushed on wrench, the hopper opened, the nut spun, and intestate was thrown by the wrench into the roadway below. (T. 35) He received injuries from which he died (T. 11, 13, 24) leaving a widow and three children (T. 82, 83)

The car could have been opened before moving it onto the bridge. (T. 31, 65) Respondent owned a number of wrenches of the ratchet, or "safety" type. (T. 84, 133)

Assignment of Errors.

1. The Supreme Court of Vermont erred in holding there was no jury issue of negligence where respondent permitted an employee without previous experience in opening hopper cars to do this work for the first time upon a bridge 18 feet above the ground, on the side of the car, with the only available footing a space about 12 inches wide, 8 or 9 inches of which was a raised stringer.

2. It further erred in holding there was no jury issue of negligence under all the circumstances of 1) supra, when

an alternate method of dumping the car, in question, involving none of these dangers, could have been utilized.

3. It further erred in holding there was no jury issue of negligence, when, under all the circumstances of 1) & 2) supra, respondent supplied this employee with a wrench not of a safety type, such type being available.

4. It further erred in holding there was no jury issue of negligence under the circumstances of 1), 2), and 3), supra, when respondent failed to furnish the employee with instructions covering the work he was to do, or warning of the dangers inherent in that work under such circumstances.

5. It further erred in failing to consider the respective elements of negligence as a whole, instead of separately, as required by the decisions of this Court.

Summary of Argument.

Petitioner's argument covers four main points. These are:

1. That the Supreme Court of Vermont erred in holding there was no jury question as to negligence in supplying a safe place to work.

2. That the Supreme Court of Vermont erred in holding there was no jury question as to negligence in furnishing an unsafe tool.

3. That the Supreme Court of Vermont erred in holding there was no jury question as to negligence in failing to instruct or warn.

4. That the Supreme Court of Vermont erred in failing to view the respective elements of negligence as a whole.

ARGUMENT.

I. Respondent was negligent in failing to use reasonable care in furnishing its employees a safe place to work under the circumstances.

The argument advanced here covers Nos. 1 and 2 of petitioner's Assignment of Errors.

It is axiomatic that, while the employer is not a guarantor of his employee's safety, he is bound to use ordinary care in furnishing him a safe place in which to work.

Washington & Georgetown R. Co. v. *McDade*, 135 U. S. 554, 34 L. Ed. 235, 10 S. Ct. 1044;

Patton v. *Texas & P. R. Co.*, 179 U. S. 658, 45 L. Ed. 361, 21 S. Ct. 275.

> "He is bound to take reasonable care and make reasonable effort,; and the greater the risk which attends the work to be done and the machinery to be used, the more imperative is the obligation resting upon him. Reasonable care becomes, then, a demand of higher supremacy; and yet, in all cases, it is a question of the reasonableness of the care; reasonableness depending upon the danger attending the place or the machinery."

Patton v. *Texas & P. R. Co., supra*

> "The duty of the master to use reasonable diligence in providing a safe place for the men in his employ to work in and to carry on the business of the master for which they are engaged has been so frequently applied in this court, and is now so thoroughly settled, as to require but little reference to the cases in which the doctrine has been declared."

Kreigh v. *Westinghouse, etc. Co.*, 214 U. S. 249, 53 L. Ed. 984, 29 S. Ct. 619.

Thus, under this rule, where a wooden walkway was maintained on a railway bridge for the use of trainmen, only 34

inches wide, the limitation of space required reasonable precaution in maintaining an adequate and safe guardrail.

Thomson v. *Boles*, 123 F. (2d) 487, cert. den. 62 S. Ct. 632, 86 L. Ed. 563.

And, placing a train upon a track so that a switch tender was compelled to mount a coupling to cross the track was a violation of his employer's duty to furnish him a safe place in which to work.

Lehigh V. R. Co. v. *Scanlon*, 259 F. 137, 170 C. C. A. 205.

A railroad engaged in interstate commerce owes an employee a duty of ordinary care, to the end that the place in which the work is to be done, and the tools and appliances furnished be safe to use in doing this work.

Atlantic C. L. R. Co. v. *Hardwick*, 239 Ala. 58, 193 So. 730.

Where a servant is required to work in a dangerous and unsafe place, the master is responsible for any injury he may sustain on account of such unsafe and dangerous condition.

Coal, etc. R. Co. v. *Deal*, 231 F. 604, 145 C. C. A. 490, error dismissed, 245 U. S. 681, 62 L. Ed. 544, 38 S. Ct. 345.

The above cases clearly establish respondent's duty of reasonable care in furnishing a safe place for the employee to work. It is indisputable that any duty of reasonable care requires an examination of the attendant circumstances for a determination as to whether or not the duty has been fulfilled. The circumstances of this case, a bridge 18 feet in the air (T. 14) with a foothold of uneven surface only 12 inches wide (T. 28, 29), not only justify, but almost compel, a jury finding of negligence. Couple these circumstances

with the further fact that the employee was not versed in this type of work (T. 22, 33, 58, 64, 69, 74, 76) and the further fact that the car in question could have been opened upon level ground (T. 31, 65) and the dereliction in duty becomes even more striking. Petitioner submits that the general rule as to duty is clearly defined, and the circumstances of this case a clear violation of that duty. These facts, as urged in petitioner's Assignment of Errors, 1 and 2, clearly demonstrate the unreasonableness of the holding of the Supreme Court of Vermont that there was no evidence to support a finding of negligence in this respect. Indeed, as the first dissenting opinion states:

> "It is difficult • • • to conceive of a stronger case for a plaintiff in support of this claim of negligence than the one here disclosed by the evidence."
> R. 10, fol. 12.

Facts were before the jury from which the jury could find that it would have been practicable under the circumstances to open the car in question upon level ground, and that the failure to do so was, under the circumstances, negligent, in that it created unnecessary dangers. This alone was sufficient basis for the verdict of the jury.

> "Where workmen are engaged in a business more or less dangerous, it is the duty of the master to exercise reasonable care for the safety of all his employees, and not to expose them to the danger of being hurt or injured by the use of dangerous appliances or unsafe place to work, where it is a matter of using due skill and care to make the place and appliances safe. There is no reason why an employee should be exposed to dangers unnecessary to the proper operation of the business of his employer."
>
> *Kreigh* v. *Westinghouse, etc., Co.*, 214 U. S. 249, 53 L. Ed. 984, 29 S. Ct. 613.

"It was the duty of the plaintiff in error to use reasonable care to so conduct its business as not to subject its servants to unnecessary danger in the prosecution of their work, and to guard against accidents in the performance of his work, which, in the exercise of reasonable care, could be foreseen and guarded against."

Lehigh Valley R. Co. v. *Scanlon*, 259 F. 137, 170 C. C. A. 205.

II. Respondent was negligent in failing to supply its employee with a wrench of the safety type, especially when such a type was available.

Here again the general standard of law has been many times repeated. The employer has a duty to furnish the employee reasonably safe tools and appliances with which to work.

Chicago & N. W. R. Co. v. *Bowers*, 241 U. S. 470, 60 L. Ed. 1107, 36 S. Ct. 624;

Kreigh v. *Westinghouse, etc., Co.*, 214 U. S. 249, 53 L. Ed. 984, 29 S. Ct. 619.

It is not petitioner's contention that this rule automatically requires the adoption of the latest, best, and safest appliances, if those in use are reasonably safe and adequate. The rule in this respect is clearly stated in the *Bowers* case, supra:

"The rule of law is: That the employer is under duty to exercise ordinary care to supply machinery and appliances reasonably safe and suitable for the use of the employee, but is not required to furnish the latest, best and safest appliances, provided those in use are reasonably safe and suitable."

It is not, therefore, urged, that if respondent had failed to purchase any wrenches of the safety type for opening hop-

per cars, that fact alone would constitute negligence. But such is not the situation in the case at bar. Respondent had purchased quite a sizeable number of these wrenches, and owned them at the time of the accident (T. 84, 133). What it did was fail to make available to its employee the safety appliance that it owned. Moreover, this fact does not stand alone. It must be considered in connection with all the other circumstances disclosed at the trial.

Union P. R. Co. v. *Hadley*, 246 U. S. 330, 62 L. Ed. 751, 38 S. Ct. 318.

This bridge, upon which the work was to be done, was 18 feet above the ground (T. 14). The available footing was at most 12 inches wide (T. 28, 29). Intestate was unfamiliar with the operation to be performed (T. 22, 33, 58, 64, 67, 69, 74, 76). He was not instructed (T. 47, 48, 65, 77). And despite all these circumstances, the tool furnished him was the frog wrench with all its dangers for a man unversed in its use in this operation. Both types of wrench were exhibits in the case (Pltf. Ex. 4, T. 120, Ex. B, T. 41). The jury was perfectly justified in finding that under all these circumstances respondent owed a duty and violated that duty. The duty was not, as some of the cases indicate would not be required, of purchasing safety wrenches, but merely a duty of supplying this type of wrench, which it had in its possession, for this particular operation. In short, where the operation was a perilous one, apt to throw the person operating the wrench (T. 37, 74, 80, 138), it was a completely justified finding that the duty of ordinary care was not satisfied by supplying a frog wrench, dangerous to one unversed in its use, in a place so fraught with peril.

The consequences of the failure of the court below to observe the rule of *Union Pac. R. Co.* v. *Hadley*, supra, and to consider the various elements of actionable negligence

as an entity, are well illustrated in the first dissenting opinion:

> "In their treatment of the claim of failure to furnish proper tools the majority state the applicable rule of law. They conclude their discussion on this point with another statement with which I find no great fault for, as before indicated, I am inclined to agree that the frog wrench may have been a proper tool to open hopper cars in places they ordinarily would be spotted. Whether it was such a tool to be used by Bailey under the circumstances here shown is another question. I should also be inclined to agree that the ordinary plumber's torch is suitable for use under ordinary circumstances but I would not concede, and I doubt whether the majority would, that an employer could properly furnish it to his workman for use in a room filled with gasoline fumes" (R. 13-14, fol. 16-17).

III. Respondent was negligent in failing to furnish its employee with instructions covering the work he was to do, or warning of the dangers inherent in that work.

Here again there can be little dispute as to the standard of care required of the employer. He is required to warn the employee of dangers which are, or should be, known to him, and which are not apparent to the employee.

Standard Oil Co. v. *Brown*, 218 U. S. 78, 54 L. Ed. 939, 30 S. Ct. 669.

Thus, an employer who fails to warn his employee, working in a dimly lighted stable, of the danger of hay being passed down through a hole in the ceiling of the stable, is negligent in this respect.

Standard Oil Co. v. *Brown, supra.*

And the failure of a foreman to warn a section hand, before prying a loose rail which he knew would jump on being loosened, makes a jury question as to negligence.

Pyatt v. *Southern Ry. Co.*, 199 N. C. 397, 154 S. E. 847.

And where a brakeman was injured on his first trip for pay, after taking two or three student trips, it was a jury question as to whether the railroad was negligent in failing to instruct him as to the proper and safe method of discharging his duties.

Cincinnati, N. O. & T. P. Ry. Co. v. *Davis*, 273 F. 481.

And whether an 18-year old section hand comprehended and fully appreciated the danger of standing on the front end of a hand car and working the lever, in the absence of warning thereof and advice as to means of avoiding danger, was a jury question.

Mills v. *Virginian Ry. Co.*, 85 W. Va. 729, 101 S. E. 604, Cert. den. 254 U. S. 629, 65 L. Ed. 447, 41 S. Ct. 6.

This, then being the recognized rule of law, the pertinent consideration is its application to the facts of this case. The testimony is ample that the conditions under which this operation was performed were exceptionally dangerous, and that the tool furnished was one perilous under these circumstances to one not experienced in its use. No warning of the dangers of the task was given, although foreman Stone was working with intestate in this very operation, and had never seen intestate before, so that he could have known nothing of his experience (T. 33). And Stone himself knew of the dangers of the work, for he gave intestate a general warning to be careful (T. 35). This warning contained no instructions, nor did it point out just what the peril involved was (T. 35). In this respect it fell far short of satisfying the rule. Intestate's death was the result of this failure.

In this respect the Court below stated that:

> "It is inconceivable that as an experienced workman he did not know what was likely to happen when the hopper began to open" (R. 6, fol. 8).

Such an assumption is completely unwarranted. The testimony as to his lack of experience in this operation (T. 22, 33, 58, 64, 69, 74, 76) made a jury question, as the first dissent clearly pointed out (R. 12, fol. 14).

Moreover, a further important consideration in this case is the implicit recognition, throughout the majority opinion, of assumption of risk as a bar to this action. This is not expressly stated, but it may be seen latent in the reasoning of the Court.

> "It is inconceivable that as an experienced workman, he did not know what was likely to happen when the hopper began to open" (R. 6, fol. 8).
>
> "Moreover, as to the claim that Bailey had never opened a hopper before and was inexperienced in that regard, it should be noted that so far as appears he had a free choice as to whether he would go on top of the car as he had theretofore done or use the wrench" (R. 7, fol. 8).

Such argument is, of course, fallacious, in view of the 1939 amendment to the Federal Employers' Liability Act, abolishing assumption or risk as a defense in toto. Even if the argument so advanced were logically tenable in light of the evidence, it only reduces and does not bar recovery.

> *Tiller* v. *Atlantic & C. L. R. Co.*, No. 296 Oct. Term, 1942, 87 L. Ed. 446.

The decision below expressly contravenes the rule of the Tiller case:

> "We hold that every vestige of the doctrine of assumption of risk was obliterated from the law by the 1939 amendment, and that Congress, by abolishing the defense of assumption of risk in that statute, did not mean to leave open the identical defense for the master by changing its name to 'non-negligence'. As this Court said in facing the hazy margin between negli-

gence and assumption of risk as involved in tne Safety Appliance Act of (March 2) 1893, 45 U. S. C. A. #1. 'Unless great care be taken, the servant's rights will be sacrificed by simply charging him with assumption of the risk under another name;' and no such result can be permitted here."

Tiller v. Atl. & C. L. R. Co., supra, at 448, 449.

As did the Court below in the Tiller case, the Supreme Court of Vermont applied the doctrine of assumption of risk under the guise of non-negligence, and failed to recognize that the Act sets up a comparative negligence rule in this respect, as well as will respect to contributory negligence. The decision below, holding there was no jury question as to negligence, deserves reversal for this reason alone, aside from the other questions involved.

IV. The Supreme Court of Vermont erred in failing to consider the respective elements of negligence as a whole.

An analysis of the opinion below shows that it considered each element of negligence separately and apart from each other element. In simple terms, the majority reasoned thus:

a) No failure to furnish a safe place to work.

1) Respondent was not an insurer—and courts will not allow juries to prescribe the space it must give its employees (R. 5, fol. 6).

2) Even though space was only 12 inches wide, cinders had been dumped in this manner before without accident (R. 5, fol. 6).

3) Respondent did not have to use the safer method, so long as the one it used was reasonably safe (R. 5, fol. 7).

b) No failure to furnish proper tools.

1) Respondent could furnish any tool reasonably safe (R. 5-6, fol. 7).

c) No failure to warn.

1) The danger was obvious; intestate must have known it; he had a free choice of what job he was to do (R. 6-7, fol. 8).

2) The warning given was adequate (R. 7, fol. 8).

The inadequacy of all these arguments in the light of the evidence has already been pointed out in the preceding sections of this brief. Suffice it to say here that the argument as to a safe place to work ignores the nature of the tool and the operation, as well as the experience of the workman; that the argument as to propriety of the tool ignores the place and the employee's experience; that the argument as to warning ignores the circumstances of place, tool, and experience, aside from the fact that it neither instructed or gave notice of the particular danger.

This type of opinion ignores the picture presented by the evidence as a whole. Dissecting the case, bit by bit, it refused to view each element in the light of the other factors presented by the testimony. Indeed, this was one of the grounds of the dissent:

> "In determining this question, the situation should be taken as a whole. So taken, there is evidence from which the jury could reasonably find that the defendant permitted its employee who had no previous experience in opening hoppers with firm ground for a footing to undertake this work for the first time in a dangerous place" (R. 7-8, fol. 9).

> "The majority dispose of the claim that the alternative way of dumping the cinders was safer on the ground, apparently, that each was reasonably safe, but in so doing they beg the question. They hold, in effect,

that the way taken was reasonably safe without, so far as it appears, taking into consideration the other method which, as before shown, was a material element for the jury's consideration in determining this very question of safe place. Then, after so holding, they say that the defendant had a choice of two reasonably safe ways so it cannot be considered negligent for employing the one it did. The fallacy of this reasoning is apparent" (R. 11-12, fol. 14.)

That such an interpretation of the Act defeats its very purpose seems almost self-evident. Pulling each separate factor from its factual setting distorts and discolors the facts as a whole, and gives only lip service to each of the rules of law involved. It is completely opposed to the standard of interpretation laid down for this Act by the late Justice Holmes:

> "On the question of its negligence the defendant undertook to split up the charge into items mentioned in the declaration as constituent elements and to ask a ruling as to each. But the whole may be greater than the sum of its parts, and the Court was justified in leaving the general question to the jury if it thought that the defendant should not be allowed to take the bundle apart and break the sticks separately, and if the defendant's conduct viewed as a whole warranted a finding of neglect. Upon that point there can be no question."
>
> *Union Pac. R. Co.* v. *Hadley*, 246 U. S. 330, 62 L. Ed. 751, 38 S. Ct. 318.

It is difficult to conceive of a judicial treatment of the facts here presented more in conflict with the principle of liberal construction of the Act in the light of its prime purpose, the protection of employes and others, set forth by Mr. Justice Murphy in *Lilly* v. *Grand Trunk W. R. Co.* (*No. 124, Oct. Term, 1942*) 87 L. Ed. 323, 325, than the treatment accorded this case by the Supreme Court of Vermont. It is submitted that the majority opinion below is a direct

invasion of the province of the jury, taking from their consideration as it does the determination of facts and proper inferences therefrom.

> "The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment. A right so fundamental and sacred to the citizen, whether guaranteed by the Constitution or provided by statute, should be jealously guarded by the Courts."
>
> *Jacob* v. *City of New York*, October Term, 1941, 86 L. Ed. 750, 751.

It is highly significant in this respect that the three justices, constituting the majority in the Supreme Court of Vermont, not only held unreasonable the findings of the twelve local citizens on the jury, but also the views of their two associates in the minority, as well as those of the three trial court judges who heard the evidence at first hand.

Conclusion.

Petitioner therefore respectfully urges that, for the causes aforesaid, the judgment of the Supreme Court of Vermont be reversed.

Respectfully submitted,

JOSEPH A. MCNAMARA,
ROBERT W. LARROW,
T. TRACY LAWSON,
Counsel for Petitioner,
209 College Street,
Burlington, Vermont.